

(b) FMS customers should be encouraged to participate with U.S. Government acquisition personnel in discussions with industry to—

- (1) Develop technical specifications;
- (2) Establish delivery schedules;
- (3) Identify any special warranty provisions or other requirements unique to the FMS customer; and
- (4) Review prices of varying alternatives, quantities, and options needed to make price-performance tradeoffs.

(c) Do not disclose to the FMS customer any data, including cost or pricing data, that is contractor proprietary unless the contractor authorizes its release.

(d) Except as provided in paragraph (e)(3) of this section, the degree of FMS customer participation in contract negotiations is left to the discretion of the contracting officer after consultation with the contractor. The contracting officer shall provide an explanation to the FMS customer if its participation in negotiations will be limited. Factors that may limit FMS customer participation include situations where—

- (1) The contract includes requirements for more than one FMS customer;
- (2) The contract includes unique U.S. requirements; or
- (3) Contractor proprietary data is a subject of negotiations.

(e) Do not allow representatives of the FMS customer to—

- (1) Direct the exclusion of certain firms from the solicitation process (they may suggest the inclusion of certain firms);
- (2) Interfere with a contractor's placement of subcontracts; or
- (3) Observe or participate in negotiations between the U.S. Government and the contractor involving cost or pricing data, unless a deviation is granted in accordance with Subpart 201.4.

(f) Do not accept directions from the FMS customer on source selection decisions or contract terms (except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer).

(g) Do not honor any requests by the FMS customer to reject any bid or proposal.

(h) If an FMS customer requests additional information concerning FMS contract prices, the contracting officer shall, after consultation with the contractor, provide sufficient information to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This information—

- (1) May include tailored responses, top-level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract price and the estimated contract price included in the initial LOA; and
- (2) May be provided orally, in writing, or by any other method acceptable to the contracting officer.

[67 FR 70325, Nov. 22, 2002]

225.7305 Limitation of liability.

Advise the contractor when the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR Subpart 46.8). Consider the costs of necessary insurance, if any, obtained by the contractor to cover the risk of loss or damage in establishing the FMS contract price.

[56 FR 36367, July 31, 1991, as amended at 68 FR 15633, Mar. 31, 2003]

225.7306 Offset arrangements.

In accordance with the Presidential policy statement of April 16, 1990, DoD does not encourage, enter into, or commit U.S. firms to FMS offset arrangements. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved. (Also see 225.7303–2(a)(3).)

[70 FR 73155, Dec. 9, 2005]

225.7307 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts for FMS. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

(b) Use the clause at 252.225-7028, Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts for the purchase of supplies and services for international military education training and FMS.

[68 FR 15633, Mar. 31, 2003. Redesignated at 70 FR 73155, Dec. 9, 2005]

Subpart 225.74—Defense Contractors Outside the United States

SOURCE: 70 FR 23801, May 5, 2005, unless otherwise noted.

225.7401 General.

(a) If an acquisition requires performance of work in a foreign country by U.S. personnel or a third country contractor, follow the procedures at PGI 225.7401(a).

(b) For work performed in Germany, eligibility for logistics support or base privileges of contractor employees is governed by U.S.-German bilateral agreements. Follow the procedures in Army in Europe Regulation 715-9, available at <http://www.per.hqusareur.army.mil/cpd/docper/default.htm>. Follow the procedures in Army in Europe Regulation 715-9, available at <http://www.per.hqusareur.army.mil/cpd/docper/GermanyDefault.aspx>.

(c) For work performed in Japan or Korea, see PGI 225.7401(c) for information on bilateral agreements and policy relating to contractor employees in Japan or Korea.

[70 FR 23801, May 5, 2005, as amended at 71 FR 39009, July 11, 2006]

225.7402 Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States.

225.7402-1 Scope.

This section applies to contracts that involve contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States in—

- (a) Contingency operations;
- (b) Humanitarian or peacekeeping operations;
- (c) Other military operations; or

(d) Military exercises designated by the combatant commander.

[71 FR 34828, June 16, 2006]

225.7402-2 Definitions.

Combatant commander, other military operations, and theater of operations, as used in this section, have the meaning given in the clause at 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

[71 FR 34828, June 16, 2006]

225.7402-3 Government support.

(a) Government support that may be authorized or required for contractor personnel performing in a theater of operations may include, but is not limited to, the types of support listed in PGI 225.7402-3(a).

(b) The agency shall provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines in coordination with the combatant commander that—

(1) Government provision of such support is needed to ensure continuation of essential contractor services; and

(2) The contractor cannot obtain adequate support from other sources.

(c) The contracting officer shall—

(1) Ensure that the contract contains valid terms, approved by the combatant commander, that specify the responsible party, if a party other than the combatant commander is responsible for providing protection to the contractor personnel performing in the theater of operations as specified in 225.7402-1;

(2) Specify in the terms of the contract, if medical or dental care is authorized beyond the standard specified in paragraph (c)(2)(i) of the clause at 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States;

(3) Provide direction to the contractor, if the contractor is required to reimburse the Government for medical treatment or transportation of contractor personnel to a selected civilian facility in accordance with paragraph (c)(2)(ii) of the clause at 252.225-7040; and